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16 UNITED STATES DISTRICT COURT
17 CENTRAL DISTRICT OF CALIFORNIA

18 SUNIL SUDUNAGUNTA,
19 Individually and on behalf of all
20 others similarly situated,
21 Plaintiff,

22 v.

23 NANTKWEST, INC., PATRICK
24 SOON-SHIONG, RICHARD
25 GOMBERG, BARRY J. SIMON,
26 STEVE GORLIN, MICHAEL D.
27 BLASZYK, HENRY JI, RICHARD
28 KUSSEROW, JOHN T. POTTS, JR.,
ROBERT ROSEN, JOHN C.
THOMAS JR., MERRILL LYNCH,
PIERCE, FENNER & SMITH, INC.,
CITIGROUP GLOBAL MARKETS
INC., JEFFERIES LLC, PIPER
JAFFRAY & CO., and MLV & CO.,
LLC.,

Defendants.

Case No. 16-cv-01947-MWF-JEM

Consolidated with
2:16-cv-3438-MWF-JFM

CLASS ACTION

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFFS' MOTION FOR
(i) AWARD OF ATTORNEYS'
FEES, (ii) REIMBURSEMENT OF
LITIGATION EXPENSES, AND
(iii) PLAINTIFFS' AWARDS**

Date: April 29, 2019
Time: 10:00 a.m.
Before: Hon. Michael Fitzgerald
Courtroom: 5A

MPA ISO MOTION FOR ATTORNEYS' FEES, REIMBURSEMENT OF
EXPENSES AND PLAINTIFFS' AWARDS

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1 Lead Plaintiffs and Class Representatives Donald Hu and Brayton Li (“Class
2 Plaintiffs”), through their counsel, move for an order:

- 3 (1) awarding attorneys’ fees of 25% of the Gross Settlement Fund;
- 4 (2) granting reimbursement of \$177,408.07 in litigation expenses; and
- 5 (3) awarding Class Plaintiffs \$7,500 each.

6 **I. INTRODUCTION**

7 Class Counsel achieved a \$12 million cash settlement against Defendants
8 NantKwest, Inc. (“NantKwest”), Patrick Soon-Shiong (“Soon-Shiong”), Richard
9 Gomberg, Barry J. Simon, Steve Gorlin, Michael D. Blaszyk, Henry Ji, Richard
10 Kusserow, John T. Potts Jr., Robert Rosen, John C. Thomas Jr., Merrill Lynch
11 Pierce Fenner & Smith, Inc., Citigroup Global Markets Inc., Jefferies LLC, Piper
12 Jaffray & Co., and MLV & Co., LLC. Class Counsel¹ request that the Court award
13 them 25% of the gross settlement fund, consistent with the Ninth Circuit
14 benchmark.

15 By any measure, the Settlement is a good result for the Class, avoiding the
16 considerable risks of summary judgment, trial, and appeal. The Settlement
17 Amount represents between 10.5% and 30.5% of Class Plaintiffs’ estimate of
18 likely recoverable damages, well above average for securities fraud class actions.

19 The reaction of the Class strongly supports the requested fees and expenses.
20 Pursuant to the Preliminary Approval Order [ECF No. 177], the Settlement
21 Administrator has mailed 25,375 notice forms to Class Members. *See Segura*
22 Decl. ¶ 11 (attached as Ex. 1 to the Joint Decl.). The Notice expressly informed
23 Class Members that Class Counsel intended to apply for an award of attorneys’
24

25
26 ¹ Unless otherwise noted, all capitalized terms defined herein shall have the same
27 meanings ascribed to them in the Stipulation of Settlement (ECF No. 173-1) or the
28 Joint Declaration of Joshua B. Silverman and David J. Stone (the “Joint
Declaration” or “Joint Decl.”), filed herewith.

1 fees of up to 25% of the Settlement Amount, an award to Class Plaintiffs not to
2 exceed \$7,500 each, and that Class Counsel would seek reimbursement of their
3 out-of-pocket expenses not to exceed \$250,000. To date, in response to the Notice,
4 neither Class Counsel nor the Settlement Administrator have received any
5 objections to the proposed fees and expenses or to Class Plaintiffs' proposed
6 reimbursement awards. Nor have Class Counsel or the Settlement Administrator
7 received any objection to or request to opt-out of the Settlement. Joint Decl. at
8 ¶¶ 54-56; *see also* Segura Decl. ¶¶ 16, 17. The deadline to file objections and to
9 request exclusion to the Settlement is April 15, 2019—one week after the filing of
10 this motion.

11 A lodestar cross-check further confirms the fairness and reasonableness of
12 Class Counsel's fee request. Class Counsel spent a total of approximately 5,033.15
13 hours of professional time having a market value of approximately \$3,123,720 in
14 prosecuting the claims in this litigation. Joint Decl. at ¶¶ 80-81. The requested
15 25% award will result in a lodestar multiplier of approximately 0.96, which is on
16 the low end of the range of reasonable multipliers that courts in the Ninth Circuit
17 routinely award.

18 In addition, the litigation expenses for which Class Counsel requests
19 reimbursement are reasonable and relate to expenses routinely incurred and
20 reimbursed. Moreover, the requested compensatory awards to each of the two
21 Class Plaintiffs are reasonable to reimburse them for the considerable time spent
22 and service that each provided the Class.

23 For these reasons, and as further set forth below, Class Counsel and Class
24 Plaintiffs respectfully submit that the Court award attorneys' fees of 25% of the
25 Gross Settlement Fund, reimbursement of their litigation expenses in the amount of
26 \$177,408.07, and an award of \$7,500 each to the two Class Plaintiffs.

II. THE PERCENTAGE OF FUND APPROACH IS APPROPRIATE FOR AWARDING ATTORNEYS' FEES

A. The Guiding Principle For Fee Awards

A “lawyer who creates a common fund” is entitled to fees from “those upon whom he has conferred a benefit.” *Paul, Johnson, Alston & Hunt v. Gaulty*, 886 F.2d 268, 271 (9th Cir. 1989). The guiding principle for determining the amount of a fee award in a common-fund case is that the fee should be “reasonable under the circumstances.” *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1296 (9th Cir. 1994) (“WPPSS”) (citation omitted).

B. The Percentage-of-the-Fund Approach

The Ninth Circuit approves of the use of the percentage-of-the-fund method for awarding fees in common fund cases. *Paul, Johnson*, 886 F.2d 268; *Torrissi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1376 (9th Cir. 1993). And, district courts in this Circuit have almost uniformly shifted to the percentage-of-the-fund method in awarding fees in class actions for the following reasons:

First, the percentage-of-the-fund method is consistent with practice in the private marketplace where contingent fee attorneys are customarily compensated by a percentage of the recovery. *In re Activision Sec. Litig.*, 723 F. Supp. 1373 (N.D. Cal. 1989) (noting that in the marketplace, attorneys and their clients routinely negotiate 25% to 40% percentage fees); *In re Cont'l Ill. Sec. Litig.*, 962 F.2d 566, 572 (7th Cir. 1992) (“The class counsel are entitled to the fee they would have received had they handled a similar suit on a contingent fee basis, with a similar outcome, for a paying client.”).

Second, the percentage-of-the-fund method more closely aligns the lawyers’ interest in being paid a fair fee with the interest of the class in achieving the maximum possible recovery in the shortest amount of time required under the

1 circumstances. *See In re Anthem, Inc. Data Breach Litig.*, 15-MD-02617-LHK,
 2 2018 U.S. Dist. LEXIS 140137, at *84 (N.D. Cal. Aug. 17, 2018) (“By tying the
 3 award to the recovery of the Class, Class Counsel’s interests are aligned with the
 4 Class, and Class Counsel are incentivized to achieve the best possible result.”)
 5 (citing 5 Newberg on Class Actions § 15:65 (5th ed. 2018)).

6 Third, the percentage-of-the-fund method decreases the burden imposed on
 7 the court (by avoiding a detailed and time-consuming lodestar analysis), while
 8 assuring that the beneficiaries do not experience unnecessary delay in receiving
 9 their share of the settlement. *See In re Activision Secs. Litig.*, 723 F. Supp. at
 10 1378-79; *see also In re Union Carbide Corp. Consumer Prod. Bus. Sec. Litig.*, 724
 11 F. Supp. 160, 170 (S.D.N.Y. 1989) (“straight contingent fee awards [are] bereft of
 12 largely judgmental and time-wasting computations of lodestars and multipliers”).

13 Fourth, the percentage-of-the-fund approach is consistent with the plain text
 14 of the Private Securities Litigation Act of 1995 (“PSLRA”), which provides that
 15 class counsel is entitled to attorneys’ fees that represent a “reasonable percentage”
 16 of the damages recovered by the class. 15 U.S.C. § 78u-4(a)(6); *see also Nguyen*
 17 *v. Radiant Pharms. Corp.*, SACV 11-00406 DOC(MLGx), 2014 U.S. Dist. LEXIS
 18 63312, at *24 (C.D. Cal. May 6, 2014); *In re Cendant Corp. Sec. Litig.*, 404 F.3d
 19 173, 188 n.7 (3d Cir. 2005) (“[T]he PSLRA has made percentage-of-recovery the
 20 standard for determining whether attorney’s fees are reasonable.”).

22 **C. The Ninth Circuit Benchmark Award is 25%**

23 In the Ninth Circuit, “25% of the common fund [is] the ‘benchmark’ award
 24 for attorney fees.” *Torrisi*, 8 F.3d at 1376. District courts in the Ninth Circuit
 25 award percentages even higher than the 25% benchmark. *See, e.g., Patel v.*
 26 *Axesstel, Inc.*, No. 14-1037, 2015 U.S. Dist. LEXIS 146949, *21 (S.D. Cal. Oct.
 27 23, 2015) (awarding 30% fees in a securities-fraud class action based on “the
 28

1 complexity of securities litigation, the lodestar crosscheck, and the lack of any
2 objection from the class members.”); *Morris v. Lifescan, Inc.*, 54 Fed. App. 663,
3 664 (9th Cir. 2003) (affirming 33% fee).

4 Here, Class Counsel requests no enhancement to the Ninth Circuit’s
5 benchmark. The fee request is squarely within the range of percentages courts in
6 this Circuit award in similar securities fraud class action settlements, and highly
7 reasonable given the favorable result achieved for the Class.

8 **III. THE 25% BENCHMARK AWARD IS REASONABLE IN THIS CASE**

9 **A. The Reasonableness Factors**

10 Courts consider some or all of the following non-exclusive list of factors in
11 determining a “reasonable” percentage to award as a percentage of the fund:
12

13 [T]he extent to which class counsel achieved exceptional results for
14 the class, whether the case was risky for class counsel, whether
15 counsel’s performance generated benefits beyond the cash settlement
16 fund, the market rate for the particular field of law (in some
17 circumstances), the burdens class counsel experienced while litigating
the case (e.g., cost, duration, foregoing other work), and whether the
case was handled on a contingency basis.

18 *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 954-55 (9th Cir. 2015)
19 (internal quotation marks omitted) (citing *Vizcaino v. Microsoft Corp.*, 290 F.3d
20 1043 1047-50 (9th Cir. 2002)). *Accord, Kerr v. Screen Actors Guild*, 526 F.2d 67,
21 70 (9th Cir. 1975). Applying these factors to the case at bar demonstrates that a
22 fee award of 25% of the Gross Settlement Fund is reasonable.²
23

24 ² The 25% rate should be applied to the Gross Settlement Fund rather than net of
25 expenses. In upholding the application in this manner, the Ninth Circuit has noted
26 that the reasonableness of a fee request is based upon the resulting figure, not the
27 denominator. *Powers v. Eichen*, 229 F.3d 1249, 1258 (9th Cir. 2000). “If twenty-
28 five percent of gross is reasonable, perhaps thirty-five percent of net would be
reasonable.” *Id.*; see also *Todd v. STAAR Surgical Co.*, CV 14-5263 MWF (GJSx),
2017 U.S. Dist. LEXIS 176183, at *24-25 (C.D. Cal. Oct. 24, 2017) (awarding
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B. Class Counsel Achieved an Excellent Result for the Class

Courts consistently recognize that the result achieved is perhaps the major factor in making a fee award. *E.g., Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983) (the “most critical factor is the degree of success obtained”).

The payment of \$12 million in cash to the Class provides an excellent recovery under the circumstances. Class Counsel and Class Plaintiffs, after consulting with experts, estimate that the \$12 million Settlement Amount represents between 10.5% and 30.5% of the maximum potential damages if the Class achieved a highly favorable outcome at trial and on appeal. Joint Decl. at ¶ 63. This range is well above average, as explained below. Therefore, the Settlement represents a highly favorable recovery for the Class which supports granting the fee request.

The Settlement achieved here is several times the median percentage recovered in securities class action settlements based on data compiled by various securities litigation watchdogs. According to an analysis by Stanford University and Cornerstone Research, a defendant-oriented economic consultancy, the annual median securities class action settlement for each year between 2007 and 2016 ranged between 1.8% and 2.8% of estimated damages.³ The Settlement here achieves a much higher percentage recovery of 10.5% to 30.5% of estimated recoverable damages. The Settlement, therefore, yields an excellent result compared to the Stanford and Cornerstone median results, which further supports the fee request of 25% of the Gross Settlement Fund.

attorneys’ fees and expenses to be paid from the gross settlement fund) (J., Fitzgerald). Additionally, the Notice indicated that the fees would be requested as a percentage of the full gross Settlement Amount. ECF No. 173-1 at 49.

³ See <http://securities.stanford.edu/research-reports/1996-2016/Settlements-Through-12-2016-Review.pdf>.

1 **C. The Risks of Further Litigation**

2 Courts recognize that the risk of continued litigation is an important factor
3 in determining a fee award. *See, e.g., WPPSS*, 19 F.3d at 1299-1300. Class
4 Plaintiffs believe their case is strong and that they would ultimately prevail.
5 However, they recognize that there are considerable risks that could result in no
6 recovery, or a lesser recovery, in lieu of a settlement. First, if this case continued,
7 Class Plaintiffs would have to prevail on the interlocutory appeal now pending
8 before the United States Court of Appeals for the Ninth Circuit. A favorable
9 ruling for Defendants in that appeal would significantly reduce the size of the
10 Class and eliminate a sizeable portion of the aggregate damages.

11 At trial, Class Plaintiffs would face significant risks as to both liability and
12 damages. A jury might easily find that Defendants did not commit fraud or bore
13 no responsibility for the alleged wrongdoing. Moreover, a jury could find that
14 damages were far lower than Class Plaintiffs calculated.

15 Class Plaintiffs also recognize that evidence produced in discovery may be
16 susceptible to different interpretations. The jury might not agree with Class
17 Plaintiffs that the evidence demonstrated that Defendants made materially false
18 and misleading statements or caused Class Plaintiffs' losses. Class Plaintiffs
19 would also face trial challenges concerning proof of control and damages. And,
20 even if successful at trial, Class Plaintiffs would still face the risk of an
21 unfavorable ruling in a dispositive post-trial motion or a reversal on appeal.

22 Given the various risks in this Action and the strengths and weaknesses of
23 the claims asserted against Defendants, the \$12 million Settlement is highly
24 favorable and in the best interests of the Class.
25

26 **D. The Skill Required and the Quality and Efficiency of Counsel's**
27 **Work**

28 The "prosecution and management of a complex national class action

1 requires unique legal skills and abilities.” *In re Omnivision Techs.*, 559 F. Supp.
2 2d 1036, 1047 (N.D. Cal. 2007). “This is particularly true in securities cases
3 because the Private Securities Litigation Reform Act makes it much more difficult
4 for securities plaintiffs to get past a motion to dismiss.” *Destefano v. Zynga, Inc.*,
5 No. 12-4007, 2016 U.S. Dist. LEXIS 17196, *59 (N.D. Cal. Feb. 11, 2016) (citing
6 *Omnivision*). The quality of Class Counsel’s work on this case is reflected in the
7 excellent result obtained. *See Norris v. Mazzola*, No. 15-4962, 2017 U.S. Dist.
8 LEXIS 208610, *39 (N.D. Cal. Dec. 19, 2017) (“that Class Counsel have
9 significant experience in this field . . . further indicates that the fee request is
10 reasonable”).

11 Class Counsel have extensive, significant, and highly focused experience in
12 the field of securities class action litigation. Joint Decl. at ¶ 71-72. “The quality
13 of opposing counsel is also relevant to the quality and skill that class counsel
14 provided” *Zynga, Inc.*, 2016 U.S. Dist. LEXIS 17196, *59. Class Plaintiffs
15 were opposed in this litigation by the nationally respected firm of Wilson Sonsini
16 Goodrich & Rosati PC and Munger, Tolles & Olson LLP, both of which mounted
17 a skillful and aggressive defense. Joint Decl. at ¶ 73.

18 At every stage of the proceedings, Class Counsel had to perform with a high
19 level of skill, efficiency, and professionalism. In the face of strong opposition
20 from highly respected securities defense firms, Class Counsel successfully
21 investigated the claims against Defendants, drafted amended complaints that
22 survived motions to dismiss, conducted effective discovery, obtained class
23 certification, and settled the claims in this Action on an excellent basis for the
24 Class. Joint Decl. at ¶ 70.

25 In particular, Class Counsel conducted a detailed investigation of the claims
26 and interviewed several confidential witnesses, drafted multiple complaints and
27 briefs in opposition to Defendants’ motions to dismiss, reviewed and analyzed
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1 documents during discovery that amounted to over 140,000 pages produced by
2 Defendants and third parties, defended the depositions of Class Plaintiffs, deposed
3 NantKwest's General Counsel, the Chairman of NantKwest's Audit Committee,
4 two accountants associated with NantKwest's outside auditor, and the attorney
5 leading the Underwriter Defendants' due diligence efforts, consulted with and
6 retained experts regarding the accounting treatment of Defendant Soon-Shiong's
7 warrants and damages sustained by the Class, successfully obtained class
8 certification, briefed an opposition to Defendants' request for an interlocutory
9 appeal, and prepared for and successfully participated in an in-person mediation.
10 Joint Decl. at ¶ 70.

11 Class Counsel's zealous and effective advocacy on behalf of the Class
12 supports approval of the fee request.

13 **E. The Contingent Nature of the Case and Financial Burden Carried**
14 **by Class Counsel**

15 Courts recognize that the determination of a fair fee must include
16 consideration of the contingent nature of the fee and the difficulties that were
17 overcome in obtaining the settlement:

18 It is an established practice in the private legal market to reward
19 attorneys for taking the risk of non-payment by paying them a
20 premium over their normal hourly rates for winning contingency
21 cases.

22 See Richard Posner, *Economic Analysis of Law*, §21.9, at 534-35 (3d ed.1986).
23 Contingent fees in risky cases that may exceed the market value of the services if
24 rendered on a non-contingent basis are accepted in the legal profession as a
25 legitimate way of assuring competent representation for plaintiffs who could not
26 afford to pay on an hourly basis regardless of whether they win or lose. *WPPSS*,
27 19 F.3d at 1299.

28 Here, Class Counsel received no compensation over the course of the
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1 litigation, and advanced significant expenses for the benefit of the Class. Any fee
2 award or expense reimbursement to Class Counsel has always been at risk and
3 completely contingent on the result achieved and on this Court's exercise of its
4 discretion in making any such award.

5 **F. The Customary Fee**

6 If this was not a class action, the customary contingent fee arrangement
7 would be in the range of 30% to 40% of the recovery. *See, e.g., Blum v. Stenson*,
8 465 U.S. 886, 903 n.“*” (1984) (concurrence) (“In tort suits, an attorney might
9 receive one-third of whatever amount the plaintiff recovers. In those cases,
10 therefore, the fee is directly proportional to the recovery.”); *In re M.D.C. Holdings*
11 *Sec. Litig.*, No. CV 89-0090 E, 1990 U.S. Dist. LEXIS 15488, *22 (S.D. Cal.
12 1990) (“In private contingent litigation, fee contracts have traditionally ranged
13 between 30% and 40% of the total recovery.”). That the 25% fee requested in this
14 case is lower than the contingent fee arrangements between lawyers and clients
15 customary in the private marketplace confirms that Class Counsel's request is
16 reasonable.

17
18 The 25% fee requested is also within the range of fees awarded by courts in
19 the Ninth Circuit in securities fraud class actions. *See, e.g., Vizcaino*, 290 F.3d at
20 1051-52 (affirming award of 28% of \$97 million settlement); *STAAR Surgical Co.*,
21 2017 U.S. Dist. LEXIS 176183, at *13 (awarding 25% of \$7 million settlement); *In*
22 *re Amgen Sec. Litig.*, CV 7-2536 PSG (PLAx), 2016 U.S. Dist. LEXIS 148577, at
23 *24-25 (C.D. Cal. Oct. 25, 2016) (awarding 25% of \$95 million settlement); *In re*
24 *Hewlett-Packard Co. Sec. Litig.*, CV 11-1404 AG (RNBx), 2014 U.S. Dist. LEXIS
25 190313 (C.D. Cal. Sep. 15, 2014) (awarding 25% of \$57 million settlement);
26 *Radiant Pharm.*, 2014 U.S. Dist. LEXIS 63312, at *24 (awarding 28% of \$2.5
27 million settlement). Accordingly, a fee award of 25% of the Gross Settlement
28 Fund here is fair and reasonable.

G. A Lodestar Cross-Check Confirms the Reasonableness of the Fee Request

Courts often compare an attorney's lodestar with a fee request made under the percentage-of-the-fund method as a "cross-check" on the reasonableness of the requested fee. *See, e.g., Vizcaino*, 290 F.3d at 1050; *Fischel v. Equitable Life Assur.*, 307 F.3d 997, 1007 (9th Cir. 2002). "[T]he lodestar calculation can be helpful in suggesting a higher percentage when litigation has been protracted [and] may provide a useful perspective on the reasonableness of a given percentage award." *Vizcaino*, 290 F. 3d at 1050.

Here, a 25% fee award would result in a reasonable multiplier of Class Counsel's lodestar, *i.e.*, the total lodestar for Class Counsel's work in this Action. Class Counsel's fee request of 25% of the Gross Settlement Fund would be \$3,000,000, which is approximately 0.96 times the lodestar.

Courts in this Circuit have routinely found that significantly higher multipliers are acceptable. For example, in *Vizcaino*, 290 F.3d at 1051-52, the Ninth Circuit affirmed a 28% fee award over objections that "the district court's lodestar cross-check . . . [] resulted in a multiplier of 3.65." *Id.* The Ninth Circuit listed twenty-three shareholder settlements in which the average multiplier was 3.28. *Id.* at 1050 n.4. Here, the 0.96 lodestar multiplier is far lower than those found reasonable in *Vizcaino*.

H. The Reaction of the Class Supports the Fee Award

The Class's reaction to the proposed fee request further supports the award of those fees. The Settlement Administrator mailed 25,375 copies of the Court-approved Notice to Class Members. Segura Decl. at ¶ 11. The Notice was also made available to the public on the Settlement Administrator's website, and a Summary Notice was twice published on a national news wire. *Id.* at ¶¶ 12-14. The Notice informed Class Members that Class Counsel would apply for attorneys' fees of up to 25% of the Settlement Amount, and advised Class

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1 Members of their right to object to Class Counsel's fee request. *See* ECF No.
2 173-1 at 49-51.

3 To date, no Class Member has objected to Class Counsel's fee request (or
4 any other aspect of the Settlement), and no Class Member has sought to be
5 excluded from the Settlement. Segura Decl. at ¶¶ 16-18. The Class's reaction
6 strongly favors approval of the fee request. "The presence or absence of
7 objections from the class is also a factor in determining the proper fee award." *In*
8 *re Heritage Bond Litig.*, No. 02-1475, 2005 U.S. Dist. LEXIS 13627, *48-50
9 (C.D. Cal. Jun. 10, 2005) ("conclud[ing] that the lack of significant objections to
10 the requested fees justifies an award of one-third of the Settlement Fund[,]
11 particularly where the number of objections to the fee was "remarkably small
12 given the wide dissemination of notice.").

13 **IV. CLASS COUNSEL'S EXPENSES WERE REASONABLE AND**
14 **NECESSARY AND SHOULD BE REIMBURSED**

15 Class Counsel's expenses are reasonable, consistent with the out-of-pocket
16 expenses that clients typically pay in complex litigation of this type, and were
17 necessarily incurred to achieve the \$12 million gross recovery for the Class. Class
18 Counsel has incurred litigation expenses of \$177,408.07, for which they have not
19 been reimbursed to date. *See* Joint Decl. at ¶ 82.

20 The amount requested is less than that identified in the Notice, which
21 apprised the Class Members that Class Counsel would seek expenses in an amount
22 not to exceed \$250,000. To date, no Class Member has objected to that request.
23 Segura Decl., ¶ 18.

24 These expenses should be reimbursed. Consistent with other jurisdictions,
25 "courts throughout the Ninth Circuit regularly award litigation costs and
26 expenses—including photocopying, printing, postage, court costs, research on
27 online databases, experts and consultants, and reasonable travel expenses—in
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1 securities class actions, as attorneys routinely bill private clients for such expenses
2 in non-contingent litigation.” *Zynga*, 2016 U.S. Dist. LEXIS 17196, *73. Class
3 Counsel has pursued this litigation knowing that its outstanding expenses could
4 only be reimbursed (without interest) if the Class won at trial or obtained a
5 settlement. Class Counsel has had no incentive to incur—and did not incur—
6 unnecessary expenses. Joint Decl. at ¶ 82.

7 The expenses for which Class Counsel seek reimbursement were all
8 necessary for the successful prosecution and resolution of the Action on behalf of
9 the Class, and are of the type routinely charged to paying clients. *Id.* Therefore,
10 these expenses should be reimbursed out of the Gross Settlement Fund.

11 The largest expense was for experts retained to address significant matters in
12 this litigation. *Id.* Dr. Zachary Nye of Stanford Consulting Group provided a
13 market efficiency analysis, a damages analysis, a loss causation analysis, and
14 assisted with the plan of allocation, at a cost of \$58,332. *Id.* These expenses are
15 consistent with those reimbursed in other similarly complex securities fraud
16 litigations that have progressed to discovery. *See, e.g., In re Ashanti Goldfields*
17 *Sec. Litig.*, No. 00-717, 2005 U.S. Dist. LEXIS 28431, *15-16 (E.D.N.Y. Nov. 15,
18 2005) (granting reimbursement of \$1,377,825.93 in litigation expenses and noting
19 “the largest expense, totaling over \$500,000, was for the services of expert
20 witnesses. . . . This is not unusual in securities litigation actions”).

21 Reimbursement is also proper with respect to the other requested expenses.
22 Courts routinely reimburse expenses for air travel, lodging, and costs incidental to
23 travel such as meals, taxis and parking, as well as ediscovery costs, deposition
24 costs, and computerized research costs. *See, e.g., Thornberry v. Delta Air Lines*,
25 676 F.2d 1240, 1244 (9th Cir. 1982), *vacated on other grounds*, 461 U.S. 952
26 (1983); *In re dj Orthopedics, Inc. Secs. Litig.*, No. 01-2238, 2004 U.S. Dist. LEXIS
27 11457, *21 (S.D. Cal. Jun. 22, 2004).

V. THE AWARD TO CLASS PLAINTIFFS SHOULD BE APPROVED

Class Plaintiffs also request that the Court award them \$7,500 each to compensate for the significant time each expended in representing the Class in the prosecution of claims against Defendants. *See* 15 U.S.C. § 78u-4(a)(4). Class Plaintiffs acknowledge that this amount is modestly higher than the “typical” \$5,000 per representative award identified by this Court in its preliminary approval order. *See* ECF No. 177 at 10. The modest upward departure is justified here because (a) the economic value of the time that each devoted to the service of the Class exceeded \$7,500, see Exhibits 11 and 12 to the Joint Decl. and (b) each conferred a substantial benefit upon the Class. As an initial matter, Class Plaintiffs negotiated with Class Counsel to limit the fee request to no more than the 25% benchmark of the Gross Settlement Fund, eliminating any possibility that a higher fee award would reduce the total amount distributed to the Class. Moreover, each met with counsel to prepare for a deposition and sat for a deposition, produced documents in response to Defendants’ discovery requests, responded to interrogatories, communicated with counsel about the Action and helped evaluate settlement proposals. Moreover, to assist the Class, each withdrew claims under Section 10(b) of the Securities Exchange Act of 1934, upon learning that such claims could not be litigated on a class wide basis due to lack of evidence supporting market efficiency.

Although \$5,000 may be a standard award, courts often reward more where, as here, the representative plaintiffs confer a higher than usual benefit upon the Class. *See, e.g., In re Veritas Software Corp. Sec. Litig.*, 396 Fed. App’x 815, 816 (3d Cir. 2010) (\$15,000 for each lead plaintiff); *Buccellato v. AT&T Operations, Inc.*, No. 10-0463-LHK, 2011 U.S. Dist. LEXIS 85699, at *7 (N.D. Cal. Jun. 30, 2011) (\$20,000 to lead plaintiff, \$5,000 to class representatives); *In re Xcel Energy, Inc. Sec., Deriv. & ERISA Litig.*, 364 F. Supp. 2d 980, 1000 (D. Minn. MPA ISO MOTION FOR ATTORNEYS’ FEES, REIMBURSEMENT OF EXPENSES AND PLAINTIFFS’ AWARDS

2005) (awarding \$100,000 to lead plaintiffs because of “the important policy role [lead plaintiffs] play in the enforcement of the federal securities laws on behalf of persons other than themselves”). *See also STAAR*, 2017 U.S. Dist. LEXIS 176183, at *15 (awarding \$10,000 to a lead plaintiff); *In re CV Therapeutics, Inc. Sec. Litig.*, No. C 03-3709 SI, 2007 U.S. Dist. LEXIS 98244, at *5 (N.D. Cal. Apr. 4, 2007) (granting \$26,000 to individual lead plaintiff for “reimbursement of time and expenses.”); *In re Quintus Sec. Litig.*, No. C-00-4263 VRW, 2006 WL 3507936, at *4 (N.D. Cal. Dec. 5, 2006) (awarding \$12,000 to individual lead plaintiff).

In short, an award of \$7,500 to each Class Plaintiff is appropriate under these circumstances.

VI. CONCLUSION

Securities class actions are complex and laden with risk. Many times class counsel, after expending thousands of hours of time and hundreds of thousands of dollars of expenses, receive no compensation whatsoever. Here, there was no guarantee that Class Plaintiffs’ claims against Defendants would bear any fruit.

This complex litigation has been extremely hard-fought, with Defendants represented by experienced and equally determined counsel. Without any assurance of success, Class Plaintiffs and their counsel pursued their claims to an exceptional conclusion. This Settlement represents an excellent recovery for the Class and reflects the skill, dedication, and tenacity of Class Counsel.

Class Counsel respectfully request that the Court approve the fee and expense application and enter the Order submitted herewith awarding Class Counsel 25% of the Gross Settlement Fund plus reimbursement of \$177,408.07 in expenses, and an award of \$7,500 each to Class Plaintiffs Hu and Li.

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1 Dated: April 8, 2019

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*Co-Lead Counsel for Class Plaintiffs
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PROOF OF SERVICE BY ELECTRONIC POSTING

I, the undersigned say:

I am not a party to the above case, and am over eighteen years old. On April 8, 2019, I served true and correct copies of the foregoing document, by posting the document electronically to the ECF website of the United States District Court for the Central District of California, for receipt electronically by the parties listed on the Court's Service List.

I affirm under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on this April 8, 2019, at Los Angeles, California.

s/Kara M. Wolke

Kara M. Wolke